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ABSTRACT

The jurisdictional responsibility for administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended (ADEA), was transferred to the Equal Employment Opportunity Commission (EEOC) from the Department of Labor (DOL) in July, 1979. The EEOC reorganized its operating and case-handling procedures, resulting in the processing of new charges without delay (under four months). By the end of Fiscal Year 1980 (FY-80), the case backlog had been reduced by two-thirds--to 35,000 charges; the remedy rate for new charges approached 50 percent; and benefits to individuals exceeded $43 million. Also, more than 125 new systemic cases were initiated pursuant to specific and coordinated selection standards. During FY-80, because of increased interest in ADEA, coupled with EEOC's high visibility in enforcing the Act, the ADEA workload increased dramatically. The individual charge rate increased by about 60 percent, from 5,374 charges filed in FY-79 to 8,779 in FY-80. To resolve the growing workload problem, EEOC requested in its 1981 budget funds for state fair employment practices agencies so they could help process some of the workload. Procedural reforms began by the EEOC should also help to smooth the age discrimination complaint process. (This annual report includes a detailed description of the process of transferring ADEA from the DOL to the EEOC, a description of cases settled and pending, and a summary of state age discrimination in employment laws.) (KC)

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AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

A report covering activities under the Act during the last quarter of Fiscal Year 1979 and Fiscal Year 1980

CE 030 847

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Submitted to Congress in 1981 in accordance with Section 13 of the Act

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

July 7, 1981

THE HONORABLE PRESIDENT OF THE SENATE

THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Gentlemen:

Enforcement responsibility for the Age Discrimination in Employment Act of 1967, as amended (ADEA), was transferred to the U.S. Equal Employment Opportunity Commission from the U.S. Department of Labor on July 1, 1979. The transfer was part of the Federal government's Reorganization Plan No. 1 of 1978 that was designed to streamline and strengthen the government's equal employment opportunity programs.

I am presenting to the Congress EEOC's first report of activities under the Act since jurisdictional responsibility has been transferred to the Commission. This report covers the period July 1, 1979, through September 30, 1980. This report meets the statutory requirements mandated by Section 13 of the ADEA.

Respectfully,

J. Clay Smith, Jr.
Acting Chairman

Daniel E. Leach, Vice Chairman
Armando M. Rodriguez, Commissioner

A REPORT TO THE CONGRESS

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STATEMENT OF THE CHAIRMAN

Transfer in July 1979 of the jurisdictional responsibility for administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended (ADEA), to the Equal Employment Opportunity Commission (EEOC) from the Department of Labor (DOL) marked the completion of the Federal government's civil rights reorganization undertaken in 1978 (Reorganization Plan No. 1 of 1978).

Earlier, EEOC had received authority for coordinating all Federal efforts to assure equal employment opportunity and responsibility for oversight and enforcement of EEO laws in the Federal sector. At the same time as the ADEA transfer, the Commission also assumed from DOL responsibility for enforcement of the Equal Pay Act of 1963, as amended (EPA). EEOC, which traditionally had been responsible for enforcement of Title VII of the Civil Rights Act of 1964, as amended, thus became the lead Federal agency for enforcing laws prohibiting employment discrimination.

Congress voted to transfer these additional responsibilities to EEOC after the Commission had demonstrated operational improvements and had increased productivity. The Commission had suffered from a cumbersome and inefficient case processing system which, as of the fall of 1977, had accumulated a backlog of 100,000 charges.

On the average, an individual filing a charge with the Commission had to wait for over two years for resolution of the charge; then there was only a 14 percent chance of gaining a remedy. The Commission's efforts in addressing systemic discrimination also were limited and unsystematic. Internally, the investigative, legal and administrative operations of the Commission were separate and uncoordinated.

Procedural and systematic reform of the Commission began late in 1977 with the opening of three model offices where the focal points of the internal reform--a rapid charge processing system, a backlog reduction system and the integration of investigatory, legal and administrative personnel--were implemented.

During 1978, the Commission tested and refined these new systems, and in January 1979 they were adopted Commission-wide. Twenty-two district offices housing investigative, legal and administrative personnel, and 27 area offices with basic intake and early settlement programs were established. In addition to the procedural reforms already established, a new systemic program to address patterns and practice of employment discrimination was developed.

The Commission's new procedures and reorganized structure resulted in the processing of new charges without delay. The elimination of the backlog of old charges began moving at a fast pace, while the average processing time for resolving new charges dropped to under four months.

By the end of FY-80, the backlog had been reduced by two-thirds to 35,000 charges, the remedy rate for new charges approached nearly 50 percent, and benefits to individuals exceeded $43 million. Further, over 125 new systemic cases were initiated pursuant to specific and coordinated selection standards.

With these new systems in place, EEOC was prepared to undertake new responsibilities. To prepare for the transfer of ADEA enforcement responsibility, EEOC and DOL developed in October 1978 a memorandum of understanding (MOU) addressing the transfer of cases and personnel. Later, these two agencies entered into a MOU covering legal activities. As a result, there was a continuity of both policy and program during the transition.

With the Commission going through operational and programmatic reforms—and after consultation with the Office of Management and Budget (OMB) and representatives of groups representing older workers—it became apparent that any significant changes in existing procedures for dealing with ADEA charges should not be attempted during the first year of EEOC's authority. Emphasis, instead, was placed on re-establishing a basic enforcement capability at the Commission.

Experienced staff from the Department of Labor was encouraged to transfer to EEOC with the function. Nearly half of the transferred positions, including most of the supervisory ones, were filled by former DOL employees. Intake staff and managers from all EEOC field offices were trained prior to their transfer to age unit functions.

Legal enforcement responsibilities were assigned to district offices. As in the Title VII area, attorneys worked alongside investigators. A comprehensive ADEA litigation strategy, which included specific procedures to ensure that attorneys were involved early in the investigative stage for those complaints where litigation appeared likely, was developed.

The startup period of enforcement of the ADEA at the Commission was encouraging. In FY-80, the first full year of operation, the pre-determination remedy rate was over 25 percent and $12.3 million in relief accrued to individuals. Investigator production exceeded best expectations.

The Commission approved for filing 52 lawsuits and achieved some significant legal victories and settlements. The Commission also began to move forward in the policy area, adopting its own guidelines.

During this period, a dramatic increase in workload was experienced. Because of increased interest in ADEA, coupled with the Commission's high visibility in gaining enforcement responsibility of the Act, the individual charge rate increased about 60 percent, from 5,374 charges filed in FY-79 to 8,779 in FY-80. To address this increase effectively, staff from Title VII units were reassigned to assist ADEA units.

With the age jurisdiction the fastest growing in antidiscrimination work, resources necessary to handle the expanding number of charges and related enforcement activities loomed as a major problem.

To help resolve the problem, EEOC requested in its 1981 budget funds for State fair employment practices agencies so they could help process some of the workload. This funding will not only help alleviate the Commission's increasing workload, but it also will strengthen enforcement of State laws banning age discrimination.

The Commission has embarked on procedural reform designed to merge current procedures inherited from DOL with EEOC's rapid-charge processing procedures used in Title VII complaint processing. These procedures were designed to ensure timely processing and increase benefits in appropriate instances through negotiated settlements. With these procedures, EEOC hopes to enhance overall enforcement of ADEA by rapidly resolving individual charges and allocating resources to processing selected charges where class issues are raised.

I. TRANSFER OF ADEA FUNCTIONS FROM DOL TO EEOC, JULY 1979

With careful advanced planning and coordination with DOL, the transfer of ADEA to EEOC went smoothly. The Commission's additional responsibility of ADEA enforcement initiated a hard look by EEOC at DOL's interpretations of the Act and necessitated major changes in EEOC's operational functions.

Policy.

The ADEA was amended in April 1978, about a year before it was transferred to EEOC. As part of the transition planning, EEOC and DOL agreed on a division of responsibilities for preparing the interpretations made necessary by the 1978 amendments. The two agencies collaborated on the development of significant interpretive statements pertaining to the amended law. After the transfer, the Commission undertook a systematic review of all other DOL interpretations to determine what additional changes would have to be made to ensure conformance with the amended law.

Personnel and Case Transfer.

In the reassignment of a program as fast moving and widespread as the ADEA, the smooth transfer of personnel and cases was essential to effective enforcement. DOL and the Commission worked hard to effect this transfer. In October 1978, they entered into a memorandum of understanding which provided for the following:

a. A policy statement concerning continuous aggressive and effective enforcement of the law;

b. Immediate initiation of detailed planning for the transition to be completed within 90 days;

c. Each agency's participation in enforcement processing, both prior to and subsequent to July 1, 1979;

d. Training of enforcement staff at both EEOC and DOL;

e. Minimizing the impact of organizational changes on affected employees, including providing early information on various employment possibilities and options; and

f. Availability of DOL enforcement action files to EEOC before and after July 1, 1979.

The purpose of the MOU was to assure that ADEA units were operative in EEOC district offices at the time of the transfer. The memorandum was implemented in the spring of 1979. DOL detailed senior staff specialists to the Commission to assist in the transition. EEOC and DOL field office directors met in Washington in March to set local transition schedules. In May, Department of Labor ADEA specialists were designated to be ADEA unit supervisors in EEOC field offices and were detailed to those offices to plan operations. A major recruitment effort was undertaken, and it resulted in the majority of ADEA supervisory and professional staff vacancies being filled before the transfer date.

In June, orientation and training were provided for key supervisory and professional staff, and the ADEA unit supervisors participated in EEOC's management planning and budget conference. By September 30, virtually all ADEA positions were filled, and the transfer of the enforcement function from DOL to EEOC was substantially complete.

In the spring of 1979, the Department of Labor, through management techniques, reduced to a minimum the inventory of charges and complaints investigated by the transfer date. As a result, only 867 pending case files were transferred.

Legal Activities

The Labor Department also sought to expedite litigation activities. Sixty-one cases were pending in Federal district courts and five in the appellate courts as of the transfer date. In July 1979, EEOC and DOL entered into another memorandum of understanding bearing on litigation activities. It provided for the transfer of these cases to EEOC, for cooperation on pending litigation and for the continued processing by DOL, in conjunction with EEOC, of those cases which had reached a stage where transfer was impractical. Pursuant to that understanding, the Department of Labor retained 19 cases in which significant actions (e.g., settlement or trial) appeared imminent and in which the assigned attorneys were not transferring to the Commission. In all cases, however, EEOC was substituted for the Secretary of Labor as plaintiff and was made responsible for litigation policy decisions.

From the date of the transfer throughout 1980, EEOC maintained and operated the ADEA as a separate and distinct line function in each of its 22 district offices and in three area offices — Boston, Kansas City and Pittsburgh. This enabled the Commission to maintain enforcement and efficiency at a high level, provided a period of close study of ADEA operations to see what improvements and expansion were needed, and reassured protected groups of the special priority that EEOC attached to the enforcement of ADEA by keeping it separate and apart from EEOC's existing Title VII responsibilities. Plans also were made to add ADEA investigative units to other area offices where warranted by workload when resources become available.

The ADEA investigative unit within each of the 25 field offices was established as the co-equal of all other units reporting to the office director. The legal staff was integrated into the existing legal unit in each district office to handle ADEA litigation.

Employees may file ADEA complaints and charges at the 25 offices where complaints are investigated, at any of the other 24 EEOC area offices or at any of the 71 area offices of the Wage and Hour Division, Department of Labor. The location of EEOC's 22 district offices and 27 area offices are listed in Appendix A.

II. REGULATIONS AND INTERPRETATIONS

The Age Discrimination in Employment Act is both a complex and developing law. The Commission has sought to provide continuity of DOL's policy, while at the same time reviewing this policy for possible revisions.

As previously noted, in the months prior to the transfer, the Commission was consulted regarding DOL's interpretations of the amendment to the ADEA. On June 29, 1979, the Commission published in the Federal Register a notice which continued in effect the ADEA interpretations and opinions of the Department of Labor until the Commission would have the opportunity to issue its own interpretations, 44 FR 37974 (June 29, 1979). On July 2, the Commission recodified at 29 CFR, Part 1627, 44 FR 38459 (July 2, 1979), the recordkeeping regulations of the Department of Labor formerly contained at 29 CFR, Part 850.

On November 21, 1979, the Commission published in final form two ADEA interpretations which had been published in proposed form by the Department of Labor prior to the transfer. Those interpretations authorized mandatory retirement of employees serving under "contracts of unlimited tenure" and of "bona fide executive or high policymaking positions" at the age of 65 (rather than at the age of 70) under certain circumstances, 29 CFR, Part 1625.11 and 1625.12. These interpretations also modified the regulations for recordkeeping with respect to retirement benefits of "bona fide executive policymaking employees," 29 CFR, Part 1627.1 and 1627.17.

On November 30, the Commission published for notice and comment its own proposed interpretations of the substantive provisions under ADEA, 44 FR 66858 (November 30, 1979). The Commission adopted most of DOL's interpretations and general applications of the Act.

As described in Section III, the Commission has begun refining its procedures for processing age cases. Proposed regulations to accommodate these charges have been drafted.

III. ADEA ADMINISTRATIVE ENFORCEMENT ACTIVITIES: 1979-80

Under the ADEA, the Commission processes individual charges of discrimination. EEOC also may initiate its own investigations ("directed investigations").

Startup activities and first-year achievements indicate that EEOC has handled its new jurisdictional responsibility both efficiently and successfully. In FY-80, the Commission resolved 6,488 charges, an increase of 25 percent over FY-79 production. A total of $12.3 million in monetary benefits accrued to individuals. The settlement rate for pre-determination conciliation exceeded 25 percent and 200 directed investigations were initiated.

Since EEOC assumed jurisdiction over ADEA, complaints have increased tremendously. In FY-79, a total of 5,374 individuals filed charges or complaints with DOL and EEOC, which represented a 14 percent increase over the prior year. In FY-80, receipts increased to 8,779 or 60 percent over FY-79.

The Commission is unsure what caused this increase. It may have been that the transfer of enforcement authority and the resultant publicity heightened awareness of the ADEA and EEOC's new intake procedures.

COMPARISON OF FY-79 AND FY-80 ADEA CHARGE PROCESSING

	FY-79[a/]	FY-80
Charges/Complaints Received	5,374	8,779
Directed Investigations Initiated	663	200
Compliance Closure Actions	5,168	6,488
o Conciliations (Pre-Determination)	4,062	4,956
o Successful Conciliations (Per-Determination)	[b/]	1,270
o Investigations	1,106	1,322
Dollar Benefits ($000)	$11,263	$12,312

a/ EEOC assumed responsibility for the ADEA in July 1979.

b/ Information not available.

During FY-80, EEOC's New York district office received 12 percent of all ADEA charges or complaints filed with the Commission, while the Seattle district office received two percent. Following is a breakdown by district offices of charges or complaints received.

FY-80 ADEA CHARGES/COMPLAINTS RECEIVED BY EEOC DISTRICT OFFICES

OFFICE	RECEIPTS	PERCENT of TOTAL
ATLANTA	349	4
BALTIMORE	483	5
BIRMINGHAM	353	4
CHARLOTTE	334	4
CHICAGO	489	5
CLEVELAND	520	6
DALLAS	427	5
DENVER	274	3
DETROIT	250	3
HOUSTON	413	5
INDIANAPOLIS	297	3
LOS ANGELES	274	3
MEMPHIS	464	5
MIAMI	317	4
MILWAUKEE	296	3
NEW ORLEANS	223	3
NEW YORK	1,077	12
PHILADELPHIA	739	8
PHOENIX	272	3
SAN FRANCISCO	251	3
ST. LOUIS	505	6
SEATTLE	172	2
TOTAL	8,779	99 (does not equal 100% due to rounding)

EEOC has developed a variety of strategies to ensure that overall enforcement of ADEA will not be compromised by the sheer volume of complaints. First, the operations evaluation unit reviewed intake procedures to ensure that the increased workload represented valid charges and complaints. Finding that the increase was valid, some Title VII resources were assigned to process age complaints.

Secondly, additional budget resources were requested from the Office of Management and Budget. While OMB did not provide additional staff resources, it did include additional funds for State and local fair employment practices agency (FEPA) programs in EEOC's FY-81 budget, which is awaiting Congressional action. These funds will be used to assist State and local FEPAs, which have age laws comparable to ADEA, in their processing of age charges. The Commission has developed standards for funding and will implement them as soon as the funds are authorized. Through the funding arrangement, EEOC will refer some of its ADEA workload to State and local agencies which have the capacity to process additional workload beyond their own receipts. In addition, these agencies will receive funds to assist them in processing their own age complaints, thereby assuring greater compliance with State and local age discrimination laws.

Further, the Commission sought to develop its own programs and procedures to meet its new challenge. While specific processing procedures were the same as those used by the Labor Department, EEOC began providing to field units regular guidance on procedural matters in the form of technical field notes, issued on a monthly basis.

In the latter part of FY-80, the Commission developed new case processing procedures for ADEA, incorporating aspects of its rapid charge processing procedures utilized for Title VII. The ADEA is much like Title VII; it is charge-oriented, high volume and emphasizes early settlement. These new procedures seek to draw from EEOC's Title VII experience.

The draft procedures were subject to two reviews by field staff — initially by all EEOC managers and supervisors, and then, following revisions, at four regional meetings by all investigative and supervisory staff with ADEA responsibilities as well as representatives from the district office legal units. At the end of FY-80, the procedures were before the Commission for approval, with issuance planned for January 1981.

The procedures will incorporate a two-stage investigatory process. Most charges filed will be initially processed through rapid charge processing. A fact-finding conference approach, where appropriate, will be utilized. This stage brings together the charging party and respondent to discuss the facts involved in the case and includes utilization of settlement techniques designed to encourage the parties to resolve the charge amicably without protracted investigation. Charges not resolved in rapid charge processing will be reviewed and, where appropriate, assigned for continued investigation. The continued investigation process will be a more traditional investigation which may involve on-site visits, more extensive data analysis and witness interviews. Charges which at intake raise policy issues or are class in nature will by-pass the rapid charge processing stage and immediately be assigned for continued investigation.

This two-stage processing system will provide EEOC with speedier processing of charges, will yield, through fact finding, a higher settlement rate with more benefits to individuals, and will enable EEOC, through its continued investigation procedures, to check the more serious violations of the ADEA.

In this connection, in FY-80 particular emphasis was placed on the development of an early litigation identification (ELI) program, modeled after a similiar program for Title VII. It was designed to further the enforcement of ADEA through a carefully controlled system to identify those complaints which, because of their discriminatory patterns and issues raised, need to be developed for possible litigation if they cannot be resolved administratively. Complaints selected for ELI processing are subject to attorney involvement throughout the investigation. Involvement of attorneys early in the investigation ensures that the evidence gathered will be of a nature which will permit the agency to move quickly and effectively to litigation.

Training for New Intake Procedures

When ADEA enforcement authority was transferred to the Commission, ADEA procedures were fully integrated with those for Title VII. This called for intensive training in ADEA for EEOC field personnel and in Title VII for age unit personnel.

Under new intake procedures, the Commission began counseling charging parties about ADEA when it appeared that it might be relevant to their allegations even if they did not initially raise age as a basis of employment discrimination. For example, if an individual who contacts EEOC to file a race complaint is over 40 years of age, intake staff attempt to ascertain whether the complainant's age also may be a basis of the alleged discrimination. If it appears possible, the complainant is advised that charges may be filed under both ADEA and Title VII.

To carry out the new procedures and to acquaint staff with new jurisdictions they would be handling, the Commission trained more than 700 field personnel in FY-80 in five training sessions held in Philadelphia, Atlanta, Chicago, San Francisco and New Orleans. Three to five district offices were combined for each of the sessions, which were attended by district and deputy district office directors, regional, supervisory and trial attorneys, compliance managers, intake supervisors, ADEA unit supervisors and equal opportunity specialists.

IV. ADEA LITIGATION ACTIVITIES: 1979-1980

A. Litigation Activity at DOL and EEOC During the Transition Year, FY-79

Activity During the Transfer Period

In order to reserve litigation decisions for EEOC, the Department of Labor filed only nine lawsuits in Federal district courts in the first six months of 1979. With one exception, DOL filed suit only when the statute of limitations threatened to extinguish rights. Of the 51 DOL cases pending at the time of transfer, DOL continued to participate in 19 of them. It transferred the remaining 42 cases to EEOC on July 1, 1979.

Many of these cases were large and complex lawsuits, and some were in advanced stages of development at the time of transfer. For example, EEOC v. American Motors Corporation, E.D. Mich., Civil Action NO. 77-1249, involved the discharge or forced retirement of 120 managerial employees. EEOC v. Phillips Petroleum Co., D. Okla., Civil Action No. 76-488-D, involved forced retirements and reclassifications of 400 employees. EEOC (substituted for Marshall, Secretary of Labor) v. Youngstown Sheet and Tube Company, N.D. Ohio, Civil Action No. 78-1070-Y, involved a 1975 layoff of managerial employees at the company's plants in East Chicago, Illinois, and Youngstown, Ohio. In October 1979, after consultations in which EEOC participated with DOL, a stipulation and order was entered into which required the company to pay $295,000 in lost wages, plus interest, to 29 aggrieved individuals.

In a number of the transferred cases, EEOC succeeded in obtaining favorable settlements. In a case involving a metropolitan Midwestern chain store, $240,000 was paid to 30 store managers which the government had alleged were unlawfully retired because of their age. Several of the cases involved maximum hiring age restrictions for law enforcement officers. The Commission succeeded in obtaining orders which required local governments to drop age restrictions and consider all qualified applicants without regard to age. In addition, the original charging parties in each of the following cases prosecuted by EEOC received a cash settlement: See EEOC v. City of Virginia Beach, E.D. Va. Civil Action No. 79-557-N; EEOC v. Broward County, S.D. Fla. Civil Action No. 79-1121; and EEOC v. County of Ventura, C.D. Cal., Civil Action No. CV-79-3086-MML.

EEOC Filings

After the effective date of the transfer, EEOC filed 16 new lawsuits in the remaining six months of calendar year 1979. Most of them resulted from investigations initiated by DOL. For example, multiple lawsuits were filed that involved issues of mandatory retirement of law enforcement officers and firefighters.

EEOC v. City of Allen Park, E.D. Mich., Civil Action No. 79-72986, involved the amendment of a city ordinance to lower from age 62 to 57 the mandatory retirement age for police officers and firefighters. A preliminary injunction was granted, restraining implementation of the ordinance pending trial.

EEOC v. Marathon County Sheriff's Department, W.D. Wis., Civil No. 79-559, involved a state law requiring that all "protective service" employees be retired upon attaining age 55. The same statute is at issue in EEOC v. City of Janesville, W.D. Wis., Civil No. 79-481, which is discussed in Section F.

Three suits involved employment practices in the airline industry.

EEOC v. Trans World Airlines, Inc., S.D. N.Y., Civil Action No. 79-4275, involved the highly disproportionate impact on older supervisory employees of a reduction-in-force of the cargo department at TWA's New York facilities.

EEOC v. Eastern Airlines, Inc., S.D. Fla., Civil Action No. 79-5943-EBD, involved hiring policies for flight attendants (stewards and stewardesses), which result in the virtual exclusion of applicants over age 40.

EEOC v. Air Line Pilots Association, Int'l and Northwest Airlines, Inc., D. Minn., Civil Action No. 3-79-635, involved a collective bargaining agreement which required pilots to exhaust accrued vacation time before retiring at age 60, thereby depriving them of pay in lieu of vacation which is available to pilots discharged or retired at an earlier age. This case was tried on the merits in May 1980 and resulted in a decision which sustained the Commission's position on all points. See 489 F.2d 1003 (D. Minn. 1980), appeal pending (8th Cir., Nos. 80-1792 and -1850).

With one exception, the remaining cases involved allegedly discriminatory discharges by a number of employers. The exception is EEOC v. National Broadcasting Co., S.D. N.Y., Civil Action No. 79-4738, which involved the failure to transfer older employees from obsolete "film editor" positions into the new "vido tape editor" jobs.

B. Decisions on ADEA Litigation, 1979

In 1979, district courts rendered favorable decisions in two major government cases.

Marshall v. Eastern Airlines, Inc., 474 F. Supp. 364 (S.D. Fla. 1979), involved the application of the special exemption for pension plans allowed under the original version of ADEA Section 4(f)(2), which was amended in 1978. The court ruled that defendant's lowering of the retirement age specified in its pension plan constituted an unlawful "subterfuge to evade the purposes of the (Act)." That decision was affirmed, in an unpublished memorandum opinion, by the court of appeals (5th Cir., No. 79-3960, April 14, 1981).

The other government lawsuit decided on the merits during 1979 was Marshall v. Goodyear Tire and Rubber Co., 22 FEP Cases 775, (W.D. Tenn. 1979). Rejecting the defense that age was a bona fide occupational qualification (BFOQ), a district court concluded that the defendant unlawfully refused even to consider applicants over age 40 for employment as "tire builders" at its Union City, Tennessee, manufacturing plant.

Following a subsequent decision on the issue of damages, 22 FEP Cases 786 (E.D. Tenn. 1980), the company filed an appeal (6th Cir., No. 80-2176).

In 1979, there was an important ruling in a private ADEA action, Murnane v. American Airlines, Inc., 21 FEP Cases 284, 21 EPD Par 30, 436 (D. D.C. 1979) appeal pending (D.C. Cir., No. 80-1025). A 43-year-old applicant for a pilot position was refused consideration for employment on the stated grounds that he was unqualified as a pilot and that, in any event, age was a bona fide occupational qualification for the job. The district court found that plaintiff was in fact unqualified. However, as an alternate basis for judgment in favor of the defendant, the court ruled that age is indeed a BFOQ for pilots. The district court's decision represents another major expansion of the BFOQ exception to the ADEA's prohibition of age discrimination in employment. The Secretary of Labor participated in Murnane as plaintiff-intervenor, and the Commission decided to continue government participation as appellant. The Commission is also participating as amicus curiae in the appeal of a case involving a similar issue, Smallwood v. United Airlines, Inc., appeal pending (4th Cir., Nos. 80-1111 and-1153).

C. Appellate Activity, 1979

During 1979, the Labor Department filed five appellate briefs in cases brought by the Secretary and two briefs as amicus curiae in cases brought by private individuals. Also during 1979, the Commission filed four appellate briefs (three as amicus) and three district court briefs. The briefs as amicus in Northwest Airlines, Inc., v. Neumann, D. Minn., Civil Action No. 4-79-112, and Fairleigh Dickinson University v. Fairleigh Dickinson University Council of American Association of University Professors Chapters, D. N.J., Civil Action No. 79-1685, both involved the important question of whether an employer can bring a declaratory judgment action against its employees or their labor organization under the ADEA. The Commission prevailed in district court on the position that such preemptive lawsuits are not permitted by the ADEA.

D. Appellate Decisions, 1979

The important appellate decisions handed down in 1979 primarily involved procedural questions. The only Supreme Court decision concerned the question of whether charging parties must commence proceedings under an appropriate state law before filing a private ADEA action in Federal court. In Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979), the Supreme Court concluded that prior resort was required, but nonetheless the court held that the absence of such resort was not grounds for dismissing an ADEA action. The proper course, the court ruled, is to hold the Federal action in abeyance until an attempt is made to commence state law proceedings. Not long after the Oscar Mayer decision, the court of appeals for the Third Circuit ruled that the government is not similarly required to commence state law proceedings before filing suit in Federal court. See Marshall v. Chamberlain Manufacturing Co., 601 F. 2d 100 (1979).

From the standpoint of government lawsuits, the most important appellate decisions under the ADEA were Marshall v. Sun Oil Co. of Pa., 592

F. 2d 563 (10th Cir.) cert. denied, 444 U.S. 826 (1979) and Marshall v. Sun Oil Co. (Delaware), 605 F. 2d 1331 (5th Cir. 1979). Both decisions reversed district court dismissals based on the supposed failure of the Department of Labor to satisfy the requirement in Section 7(B) that, "before instituting any action under this Act, the Commission (formerly, the Secretary of Labor) shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with requirements of this Act through informal methods of conciliation, conference, and persuasion" (29 U.S.C. §626(b)). Both appellate decisions concluded that the Department of Labor satisfied the conciliation requirement by informing the prospective defendants of the alleged violations and of the make-whole relief being sought. This was done by notifying prospective defendants of the Department's intention to file suit in the event that satisfactory settlements could not be reached and by allowing them a reasonable opportunity to respond. In addition, taking a cue from the Supreme Court, both decisions concluded that even in the absence of sufficient conciliation, government enforcement actions should not be dismissed but rather held in abeyance to permit additional conciliation efforts.

E. Litigation Activity, 1980

The number of lawsuits filed by EEOC in FY-80 was 52, more than double the number filed in FY-79 by both DOL and EEOC.

The largest lawsuit brought by EEOC during 1980, in numbers of persons allegedly discriminated against and the amount of potential monetary liability, was EEOC v. Consolidated Edison of New York, S.D. N.Y., Civil Action No. 80-1292. That case centers on a reduction-in-force which occurred in 1977. Of the 199 employees terminated, 82 percent were in the 40-65 year-old protected age group (PAG), even though PAG employees constituted only 55 percent of the affected managerial staff. Statistical evidence of discrimination was strongly buttressed by overt age-discriminatory statements by officials responsible for selecting employees to be terminated. See 25 FEP Cases 537 (S.D. N.Y. 1981), where the district court denied the defendant's motion for summary judgment.

Among the important legal issues raised in Commission lawsuits during 1980 were several involving novel questions concerning employees' benefits. EEOC v. Beacon Journal Publishing Co., N.D. Ohio, Civil Action No. 80-1785A, and EEOC v. Weirton Steel Division of National Steel Corp., N.D. W. Va., Civil Action No. 80-0091-W(H), both involved the denial of disability insurance benefits to employees who became disabled after attaining age 60. EEOC v. Westinghouse Electric Corp., D. N.J., Civil Action No. 80-2053, and EEOC v. Eastman Kodak Co., S.D. N.Y., Civil Action No. 80-Civ-3345, involved the denial of severance pay to employees forced into early retirement because of plant closings.

Perhaps the most important settlement of the year obtained by EEOC involved the age-based denial of employee benefits. In EEOC v. City of Council Bluffs and State of Iowa, S.D. Iowa, Civil Action No. 79-45-W, the Commission challenged a state law which mandated reduced benefits for firefighters and law enforcement officers disabled after attaining age 50.

Settlement was made possible by amendment of the state law, which now provides for equal benefits regardless of age. Under the settlement, the individual charging party received the full amount of lost benefits, plus interest, and an increase in the amount of monthly disability retirement benefits. As a direct result of the settlement, a class of previously disabled individuals also will receive increases in these disability benefits.

F. Decisions on ADEA Litigation, 1980

In EEOC v. City of St. Paul 24 EPD Par 31,477, (D. Minn., 1980) the district court concluded that age was not a bona fide occupational qualification justifying the age-65 retirement of a district fire chief. The court found that the facts supported a BFOQ exemption for line firefighters, but not for the purely supervisory position of district chief. In a supplemental memorandum, the district court denied a motion for reconsideration, rejecting the reasoning of the Seventh Circuit's decision in EEOC v. City of Janesville 630 F.2d 1254 (7th Cir. 1980). In the Janesville opinion, the court of appeals vacated a preliminary injunction entered by the district court, prohibiting the age-65 mandatory retirement of the chief of police. See 480 F. Supp. 1375 (W.D. Wis. 1979). The court of appeals reasoned that the BFOQ exemption should be applied on the basis of whether it was "reasonably necessary to the particular business" (29 U.S.C. §621(f)(1)), in that case the business of law enforcement. Accordingly, the court ruled that if a BFOQ were proved for line personnel, it should apply to supervisory personnel as well. The Commission does not agree with the Seventh Circuit opinion and intends to press its position in the district courts of other circuits.

G. Appellate Activity, 1980

In 1980, EEOC filed 16 appellate briefs (11 as amicus curiae) and was involved in several major appellate decisions on substantive issues. In EEOC v. Baltimore and Ohio Railroad Company, 632 F 2d 1107 (4th Cir. 1980), the court concluded that it was unlawful to use pension eligibility as a determining factor in selecting employees for termination during an economically necessitated reduction-in-force. The court also concluded that it was an unlawful "subterfuge to evade the purposes of the ADEA)" (29 U.S.C. §623 (f)(2)) to make a post-Act pension plan amendment where one purpose was to justify age-based retirements.

In EEOC v. Sandia Corp., 639 F 2d 600, (10th Cir. 1980) the court affirmed a trial-court decision which ruled that more than a hundred nuclear scientists and engineers had been selected for termination in 1973 at least in part because of their age. Proof of discrimination was based primarily on statistics which showed that employees between 52 and 64 years of age bore a disproportionate share of the company's reduction-in-force.

V. STATE AGE DISCRIMINATION LAWS

Before enactment in 1965 of the ADEA, 21 states, Puerto Rico and the Virgin Islands had laws prohibiting age discrimination in employment.* Since then, 22 other states, the District of Columbia and Guam have added such laws. Passage of amendments and continued enforcement no doubt have influenced the increase in state activity.

State laws vary considerably with regard to age limits, coverage, prohibited discriminatory practices and penalties imposed. For example, while ADEA established specific mimimum and maximum age limits — 40 to 70, with no upper age limit in Federal government — the state age discrimination statutes differ widely in this respect.

Provisions of state age discrimination laws as of March 1980 are summarized by jurisdiction in Appendix B. State agencies which are referral agencies also are listed in that appendix.

As noted in Section III, the Commission requested funding in its FY-81 budget for State and local fair employment practices agencies. Upon Congressional approval, a portion of these funds will be allocated to assist those agencies in resolving their charges.

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* U.S. Department of Labor, The Older American Worker: Age Discrimination Employment, Research Material, June 1965, p. 107.

APPENDIX A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DISTRICT & AREA OFFICES

ATLANTA DISTRICT OFFICE
Citizens' Trust Building, 10th Floor
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
(404) 221-4566
FTS 242-4566

GREENVILLE AREA OFFICE
Banker's Trust Building, Suite 507
7 N. Laurens Street
Greenville, South Carolina 29602
(803) 233-1791
FTS 677-9388

BALTIMORE DISTRICT OFFICE
Rotunda Building, Suite 210
711 W. 40th Street
Baltimore,,Maryland 21211
(301) 962-3932
FTS 922-3932

NORFOLK AREA OFFICE
Federal Building, Room 412
200 Granby Mall
Norfolk, Virginia 23510
(804) 441-3470
FTS 827-3470

RICHMOND AREA OFFICE
400 N. 8th Street, Room 6213
Richmond, Virginia 23240
(804) 771-2692
FTS 925-2692

WASHINGTON AREA OFFICE
1717 H Street, N.W., Suite 402
Washington, D.C. 20006
(202) 653-6197
FTS 653-6200

BIRMINGHAM DISTRICT OFFICE
2121 8th Avenue, N.
Birmingham, Alabama 35203
(205) 254-1166
FTS 229-1166

JACKSON AREA OFFICE
Federal Office Building, Suite 721
100 W. Capitol Street
Jackson, Mississippi 39201
(601) 960-4537
FTS 490-4537

CHARLOTTE DISTRICT OFFICE
1301 E. Morehead
Charlotte, North Carolina 28204
(704) 371-6437
FTS 672-6455

GREENSBORO AREA OFFICE
Post Office Building, Room 132
324 W. Market Street
Greensboro, North Carolina 27402
(919) 378-5174
FTS 699-5174

RALEIGH AREA OFFICE
414 Fayetteville Street
Raleigh, North Carolina 27608
(919) 755-4064
FTS 672-4064

CHICAGO DISTRICT OFFICE
Federal Building, Room 234
536 S. Clark Street
Chicago, Illinois 60605
(312) 353-2713
FTS 353-2713

CLEVELAND DISTRICT OFFICE
Engineers' Building, Room 602
1365 Ontario Street
Cleveland, Ohio 44114
(216) 522-7425
FTS 293-4784

CINCINNATI AREA OFFICE
Federal Building, Room 7019
550 Main Street
Cincinnati, Ohio 45202
(513) 684-2379
FTS 684-2851

DAYTON AREA OFFICE
Federal Building, Room 608
200 W. 2nd Street
Dayton, Ohio 45402
(513) 225-2753
FTS 774-2753

DALLAS DISTRICT OFFICE
1900 Pacific Building, 13th Floor
Dallas, Texas 75201
(214) 767-4607
FTS 729-4607

EL PASO AREA OFFICE
Property Trust Building, Room E-235
2211 E. Missouri
El Paso, Texas 79903
(915) 543-7596
FTS 572-7597

OKLAHOMA CITY AREA OFFICE
50 Penn Place, Suite 1430
Oklahoma City, Oklahoma 73118
(405) 231-4912
FTS 736-4912

DENVER DISTRICT OFFICE
1531 Stout Street, 6th Floor
Denver, Colorado 80202
(303) 837-2771
FTS 327-2771

DETROIT DISTRICT OFFICE
First National Building, Suite 600
660 Woodward Avenue
Detroit, Michigan 48226
(313) 226-7636
FTS 226-7636

HOUSTON DISTRICT OFFICE
Federal Building, Room 1101
2320 LaBranch Avenue
Houston, Texas 77004
(713) 226-5561
FTS 527-5611

SAN ANTONIO AREA OFFICE
727 E. Durango, Suite B-601
San Antonio, Texas 78206
(512) 229-6051
FTS 730-6051

INDIANAPOLIS DISTRICT OFFICE
Federal Building
U.S. Courthouse, Room 456
46 E. Ohio Street
Indianapolis, Indiana 46204
(317) 269-7212
FTS 331-7212

LOS ANGELES DISTRICT OFFICE
3255 Wilshire Boulevard, 9th Floor
Los Angeles, California 90010
(213) 688-3400
FTS 798-3400

SAN DIEGO AREA OFFICE
Federal Building
880 Front Street
San Diego, California 92188
(714) 293-6288
FTS 895-6288

MEMPHIS DISTRICT OFFICE
1407 Union Avenue, Suite 502
Memphis, Tennessee 38104
(901) 521-2617
FTS 222-2617

LOUISVILLE AREA OFFICE
U.S. Post Office and Courthouse
Room 105
601 W. Broadway
Louisville, Kentucky 40202
(502) 582-6082
FTS 352-6082

NASHVILLE AREA OFFICE
Parkway Towers, Suite 1820
404 James Robertson Parkway
Nashville, Tennessee 37219
(615) 251-5820
FTS 852-5820

MIAMI DISTRICT OFFICE
Dupont Plaza Center, Suite 414
300 Biscayne Boulevard Way
Miami, Florida 33131
(305) 350-4491
FTS 350-4491

TAMPA AREA OFFICE
700 Twiggs Street, Room 302
Tampa, Florida 33602
(813) 228-2310
FTS 826-2284

MILWAUKEE DISTRICT OFFICE
Veterans Administration Building
Room 612
342 N. Water Street
Milwaukee, Wisconsin 53202
(414) 291-1111
FTS 362-1111

MINNEAPOLIS AREA OFFICE
Plymouth Building
12 S. 6th Street
Minneapolis, Minnesota 55402
(612) 725-6101
FTS 725-6101

NEW ORLEANS DISTRICT OFFICE
F. Edward Hebert Federal Building
600 South Street
New Orleans, Louisiana 70130
(504) 589-3842
FTS 682-3842

LITTLE ROCK AREA OFFICE
Federal Building, Room 2132
700 W. Capitol
Little Rock, Arkansas 72201
(501) 378-5901
FTS 740-5901

NEW YORK DISTRICT OFFICE
90 Church Street, Room 1301
New York, New York 10007
(212) 264-7161
FTS 264-7161

BOSTON AREA OFFICE
150 Causeway Street, Suite 1000
Boston, Massachusetts 02114
(617) 223-4535
FTS 223-4535

BUFFALO AREA OFFICE
One W. Genessee Street, Room 320
Buffalo, New York 14202
(716) 846-4441
FTS 437-4441

PHILADELPHIA DISTRICT OFFICE
127 N. 4th Street, Suite 200
Philadelphia, Pennsylvania 19106
(215) 597-7784
FTS 597-7784

NEWARK AREA OFFICE
744 Broad Street, Room 502
Newark, New Jersey 07102
(201) 645-6383
FTS 341-6383

PITTSBURGH AREA OFFICE
Federal Building, Room 2038A
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(412) 644-3444
FTS 722-3444

PHOENIX DISTRICT OFFICE
201 N. Central Avenue, Suite 1450
Phoenix, Arizona 85073
(602) 261-3882
FTS 261-3882

ALBUQUERQUE AREA OFFICE
Western Bank Building, Suite 1515
505 Marquette, N.W.
Albuquerque, New Mexico 87101
(505) 766-2061
FTS 474-2061

ST. LOUIS DISTRICT OFFICE
625 N. Euclid Street
St. Louis, Missouri 63108
(314) 425-5571
FTS 279-5571

KANSAS CITY AREA OFFICE
1150 Grand, 1st Floor
Kansas City, Missouri 64106
(816) 374-5773
FTS 758-5773

SAN FRANCISCO DISTRICT OFFICE
1390 Market Street, Suite 325
San Francisco, California 94102
(415) 556-0260
FTS 556-0260

FRESNO AREA OFFICE
1313 P Street, Suite 103
Fresno, California 93721
(209) 487-5793
FTS 467-5793

OAKLAND AREA OFFICE
George P. Miller Federal Building
Room 640
1515 Clay Street
Oakland, California 94612
(415) 273-7588
FTS 536-7588

SAN JOSE AREA OFFICE
Crocker Plaza Building, Room 300
84 West Santa Clara
San Jose, California 95113
(408) 275-7352
FTS 463-7352

SEATTLE DISTRICT OFFICE
Dexter Horton Building, 7th Floor
710 Second Avenue
Seattle, Washington 98104
(206) 442-0968
FTS 399-0968

APPENDIX B

REFERRAL OF ADEA CHARGES TO STATE AGENCIES

Some state agencies are characterized as referral agencies within the meaning of Section 11(b) of the Age Discrimination in Employment Act, 29 USC § 623.

The following information about state agencies was compiled in March 1980.

Section 14(b) of the ADEA provides in part:

> (B) In the case of an alleged unlawful practice occurring in a state which has a law prohibiting discrimination in employment because of age and establishing or authorizing a state authority to grant or seek relief from such discriminatory practice, no suit may be brought under Section 7 of this Act before the expiration of sixty days after proceedings have been commenced under the state law, unless such proceedings have been earlier terminated....."

Thus, Section 14(b) directs that referral must be made when:

1. the state has a statute which prohibits age discrimination in employment; and

2. the state has authorized an agency to grant or seek relief.

In Oscar Mayers and Co. v. Evans, 99 S. Ct. 2066 (1979), the US Supreme Court examined the relationship between Section 706(c) of the Civil Rights Act of 1961, as amended, 42 USC § 2000e - 5(c), and Section 1-1(b) of the ADEA. The Court noted:

> Since the ADEA and Title VII share a common purpose, the elimination of discrimination in the workplace; since the language of § 14(b) is almost in haec verbe with § 706(b) ... and since the legislative history of § 14(b) indicates that its source was § 706(b), we may properly conclude that Congress intended that the construction of § 14(b) should follow that of § 706(b) ... we therefore conclude that § 14(b), is intended to screen from the Federal courts those discrimination complaints that might be settled to the satisfaction of the grievant in state proceedings. We further conclude that prior resort to appropriate state proceedings is required under § 14(b), just as under § 706(b).99 S. Ct. of 2071.

Accordingly, what follows is a list of the states and whether referral is required under the Age Discrimination in Employment Act.

ALABAMA

Alabama has no statutory provisions of general application pertaining to age discrimination in employment. Therefore, it would not qualify as an A.D.E.A. referral state under the holding in Oscar Mayer.

ALASKA *

Discrimination in employment on account of age is prohibited under the Alaska Fair Employment Practices Act. This is a broad statute which covers all aspects of age discrimination in employment. The State Commission of Human Rights is responsible for enforcement of the Act. An age discrimination complaint can be filed with the State Commission for Human Rights which has the authority to investigate such complaints, enter into conciliation agreements and to grant appropriate relief, including but not limited to, the hiring and reinstatement or upgrading of an employee, with or without backpay. Alaska's statute does not provide for any age limitations for discrimination complaints based on age.

A person, employer, labor organization or employment agency, who or which wilfully engages in an unlawful discriminatory conduct (i.e., discrimination based on age) is guilty of a misdemeanor and upon conviction by a court of competent jurisdiction may be fined not more than $500, or imprisoned for not more than 30 days, or both.

*See notation at end of Appendix B on referral of ADEA charges for both private and public sector employees to states.

The Governor's Code of Fair Practices prohibits age discrimination in state government (including state contracts). This proclamation does not discuss the types of remedies available to state employees who have been discriminated against on account of age.

Alaska would qualify as a referral state for A.D.E.A. cases under the holding of Oscar Mayer.

ARIZONA

Arizona does not have a law of general application prohibiting employment discrimination based on age. There are, however, several separate provisions which address the issue of age discrimination in employment.

(1) An Executive Order, (E.O. No. 75-5, April 28, 1975), prohibits employment discrimination based on age by government contractors and subcontractors on state contracts. Under this Executive Order, age discrimination complaints must be filed with the Arizona Civil Rights Division. The Civil Rights Division has authority to receive and process such complaints and to enter into conciliation agreements. If the Division is unable to secure a conciliation agreement, it may proceed with an age discrimination complaint by bringing a civil action in the appropriate state court. Therefore, in cases involving age discrimination by government contractors and subcontractors on state contracts, referral of A.D.E.A. cases under Oscar Mayer would be necessary since there is a state agency empowered to seek relief in such instances.

There is no age limitation under this Order.

(2) The Arizona Civil Rights Act makes it an unlawful pre-employment inquiry to require that an applicant produce proof of age in the form of a birth certificate, baptismal record, or employment certificate, or certificate of age issued by school authorities. The procedures for filing a complaint and seeking relief through state channels for a violation of this provision are identical to those enumerated in item #1 above. Again, referral would be necessary under the courts holding in Oscar Mayer. There is no age limitation under this statutory provision.

(3) An Arizona statute, (H.B. 2412, L. 1978), makes mandatory retirement of public employees before they reach age 70 unlawful. The Act does not discuss methods of seeking relief if there is a violation of this provision. Therefore, referral of A.D.E.A. cases falling under this provision would not be necessary.

ARKANSAS

Arkansas has no statutory provisions of general application pertaining to age discrimination in employment. However, discrimination in public employment against individuals because of their age is prohibited under Arkansas law. This prohibition is limited to persons who are at least 40, but less than 70 years of age. This Act does not provide for any state remedies for breaches of its provisions. Therefore, referral under the holding of Oscar Mayer would not be necessary since Arkansas does not provide any relief through state channels for age discrimination in employment.

Arkansas law does not prohibit compulsory retirement of a person age 65, but less than 70, who for 2 years immediately before retirement is employed in a:

(1) bona fide executive or a high policy making position; and

(2) is entitled to an immediate non-forfeitable annual retirement benefit which equals in the aggregate at least $27,000.

The statute further states that it does not prohibit compulsory retirement of any employee who has attained 65 years of age, but not 70 years of age, and who is serving under a contract of unlimited tenure) at a public institution of higher education until July 1, 1982. The prohibition of this Act applies to such employees with unlimited tenure who retire after July 11, 1982.

There are no penalty provisions under this statute.

CALIFORNIA *

Discrimination based on age is prohibited under the California Fair Employment Practices Act. This is a broad statute which encompasses every aspect of age discrimination in employment.

Enforcement authority is vested in the California Division of Fair Employment Practices and the California State Employment Practice Commission (which comes under the auspices of the Division of Fair Employment Practices). The Division may investigate age discrimination complaints and may attempt to enter into conciliation agreements. If there is a failure to conciliate, the Division may issue a "written accusation" which is presented to the Commission. The Commission may grant any type of relief it deems appropriate, including the issuance of cease and desist orders, and ordering the hiring and reinstatement or upgrading of employees, with or without backpay.

The prohibition against age discrimination in California is limited to persons who are at least 40 years of age.

Referral of A.D.E.A. complaints would be necessary in accordance with the court's holding in Oscar Mayer.

The California statute does not prohibit compulsory retirement of:

(A) Prior to July 1, 1982, of any employee, who has attained 65 years of age and is serving under a contract of unlimited tenure, or similar arrangement providing for unlimited tenure at an institution of higher education as defined by Section 1201(a) of the Federal Higher Education Act of 1965.

On or after July 1, 1982, this subdivision is to apply only to an employee who has attained 70 years of age.

(B) Any employee 65 years of age and who for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy making position and such employee is entitled to an immediate non-forfeitable annual retirement benefit which equals, in the aggregate, at least $27,000.

COLORADO *

Colorado law forbids discharge of employees solely on the basis of age if the individual is between the ages of 18 and 60 years old. The statute provides for a penalty of a fine of not less than $250.00 for each and every violation for anyone convicted thereunder. In accordance with the Court's holding in White v. Dallas Independent School District, 581 F. 2d. 556 (1978) and the Oscar Mayer decision it would appear that referral of A.D.E.A. complaints would be necessary since Colorado's statute does empower the state (i.e., some state authority) to institute criminal proceedings with respect to employee

discharges based on age. However, referral would be necessary only where a complainant has been discharged because of their age. This rule would not apply in those instances where a person alleges age discrimination with regard to other aspects of employment, i.e., hiring, promotions, etc.

CONNECTICUT *

Discrimination in employment based on age is prohibited under the Connecticut Fair Employment Practices Act. This is a broad statute which encompasses all aspects of employment discrimination based on age. The Connecticut Commission on Human Rights and Opportunities is empowered to receive complaints based on age discrimination in employment. The Commission may receive and process such complaints and issue appropriate orders to eliminate the discriminatory practices. The provision covers persons up to age 70.

This Act does not apply to:

(1) termination of employment of any person who has attained age 70 and is entitled to benefits under any pension or retirement plan or system provided for state or municipal employees or for teachers in the public schools of the state .

(2) termination of employment of any person 65 and who, for 2 years immediately preceding such termination, is employed in a bona-fide executive or a high policy-making position, if such person is entitled to an immediate non-forfeitable annual retirement benefit which equals, in the aggregate, at least $27,000.

(3) termination of persons in occupations, including police work and firefighting in which age is a BFQ.

(4) the operation of any bona fide apprenticeship system or plan.

(5) the observance of the terms of a bona fide seniority system of any bona fide employee benefit plan for retirement, pensions or insurance which is not adopted for the purpose of evading such provisions, except that no such plan shall excuse the failure to hire any individual and no such system or plan shall require or permit the termination of employment on the basis of age.

The Connecticut Code of Fair Practices establishes a policy of non-discrimination on the basis of age and it applies to state agencies, state public contracts and all aspects of state government. A complainant may seek relief under the State Code of Fair Practices for discrimination in employment based on age by petitioning the Court of Common Pleas for appropriate relief. No age limitation is mentioned.

Connecticut would qualify as a referral state for A.D.E.A. complaints under the Oscar Mayer decision.

DELAWARE *

Discrimination in employment based on age is prohibited under the Delaware Fair Employment Practices Act. The statutory language of the Act is broad and covers all aspects of age discrimination in employment. The Delaware Department of Labor is empowered to receive age discrimination in employment complaints. The Department processes such complaints and may seek to enter into conciliation agreements. If the Department is unable to secure voluntary compliance, steps are taken to schedule a hearing before the Delaware Review Board. The Review Board may order such remedies it deems appropriate, including the issuance of cease and desist orders and reinstatement or hiring of employees, with or without backpay.

Delaware's laws in this regard covers only persons between the ages of 40 and 70.

Delaware would qualify as a referral state for A.D.E.A. cases under the Oscar Mayer decision.

DISTRICT OF COLUMBIA

Discrimination in employment on account of age is prohibited under D.C.'s Human Rights Law.

This is a broad statute which covers age discrimination in all aspects of employment. A complainant may file a complaint with the D.C. Commission on Human Rights. The Commission may process such complaints and attempt to enter into conciliation agreements. The Commission may also issue cease and desist orders and grant other appropriate relief including hiring, reinstatement or upgrading of employees, with or without backpay.

The provisions of this law is limited to persons between the ages of 18 to 65 years of age.

The Mayor of D.C. issued regulations forbidding discrimination in District government based on age. The age limit is 18 to 65 years. Remedies for violations under this regulation must be sought in accordance with the competitive service regulations of the Civil Service Commission (Now OPM).

D.C. would qualify as a referral jurisdiction under the court's holding in Oscar Mayer.

FLORIDA

Age discrimination in employment is prohibited under the Florida Human Rights Act. This is a statute of general application and applies to all aspects of employment. The Florida Commission on Human Relations is responsible for enforcement of the Act. A complaint based on age discrimination in employment may be filed with the Commission on Human Relations. The Commission is authorized to receive and process such complaints, to investigate complaints and to attempt to enter into conciliation agreements. The Commission may issue orders prohibiting discriminatory practices and provide appropriate relief.

There is no age limitation under Florida law.

Florida law also prohibits age discrimination in public employment. There are no age limitations under this statutory provision. Any state employee (under the Florida Career Service System) or applicant for state employment may appeal to the Career Service Commission under the procedures established for that agency under the state's laws. The type of relief available under Florida law in this regard is not clear, although hiring or reinstatement is available. This Act also states that any person other than an employee in the career service system aggrieved thereunder may bring a civil action in a court of competent jurisdiction.

Florida would qualify as a referral state for A.D.E.A. complaints under the Oscar Mayer Decision.

GEORGIA

Discrimination in employment based on age is prohibited under Georgia law. This statutory provision applies to individuals ages 40 to 65. This statutory provision provides that it is a misdemeanor to breach its provisions.

Georgia would qualify as a referral state for complaints based on age discrimination brought by private employees in accordance with the White v. Dallas Independent School District case and Oscar Mayer since the applicable statute does provide for criminal penalties for its breach. Thus, a state authority is empowered to institute criminal proceedings in age discrimination cases.

A Georgia Act prohibits discrimination based on age in public employment. This is a broad statutory provision and applies to all aspects of public employment. The statute applies to persons between the ages of 40 and 65. Persons aggrieved under the statute may file a complaint with the Administrator of the Office of Fair Employment Practices. The Administrator may attempt to enter into conciliation agreements. If the Administrator is unable to secure a conciliation agreement, he can request that the Governor of the state appoint a Special Master to conduct a hearing under the statute. The Special Master is empowered to issue cease and desist orders and to take any remedial action he deems appropriate including hiring, reinstatement, etc.

Referral of A.D.E.A. complaints involving public employees would be necessary under the Oscar Mayer decision.

Note: Unless extended by the General Assembly, this statute is repealed on July 1, 1980.

HAWAII

Age discrimination in employment is prohibited in Hawaii pursuant to the Hawaii Fair Employment Practices Act. This is a statute of general application and covers all aspects of age discrimination in employment. Complaints based on age discrimination in employment are filed with the Hawaii Department of Labor and Industrial Relations. The Department is empowered to process such complaints and to enter into conciliation agreements. In those cases where the Department has been unable to secure a conciliation agreement, it may issue an order requiring a respondent to cease and desist from discriminatory employment practices. The Department may also order a respondent to take affirmative action, including but not limited to hiring, reinstatement, or upgrading employees, with or without backpay.

There are no age limitations under the Hawaii statutes regarding age discrimination in employment.

Hawaii would qualify as a referral state under the Oscar Mayer decision.

The Hawaii Civil Service law prohibits age discrimination in employment for public employees. A public employee claiming to be discriminated against on account of age may file a complaint with the Hawaii Department of Labor and Industrial Relations (the remedies being identical to those available to private sector employees).

Hawaii would qualify as a referral state for A.D.E.A. complaints filed by Hawaii public employees in accordance with the Oscar Mayer decision.

IDAHO

Discrimination in employment on the basis of age where the employee is less than 60 years of age is prohibited under Idaho law. A person believing he or she has been the victim of age discrimination may file a complaint with the Idaho Commissioner of Labor. The Commissioner has broad authority to grant relief and may make such orders as he deems appropriate to enforce the provisions of the Act.

Idaho would qualify as a referral state for purposes of A.D.E.A. complaints in accordance with the Oscar Mayer decision.

An Idaho Executive Order provides that state employees are to be recruited, appointed, assigned and promoted without regard to age. There are no age limitations under this Order. A discrimination complaint based on age may be filed with the Idaho Human Rights Commission in accordance with the provisions of the Executive Order. The Idaho Commission has broad authority to issue orders and grant appropriate relief. If the respondent refuses to obey an order of the Commission, the complainant must go to a state court to enforce it.

Referral of A.D.E.A. complaints involving public employees in Idaho would be necessary under the court's holding in Oscar Mayer.

ILLINOIS

Discrimination in employment based on age is prohibited under Illinois law. This law pertains to persons over 45 years of age and applies to both public and private sector employees. This statute provides for criminal penalties for wilfull violations of its provisions. Thus a state authority exists to prosecute such violations. Illinois would qualify as a referral state for A.D.E.A. complaints in accordance with the courts holdings in White v. Dallas Independent School District and Oscar Mayer since the state's statute does provide for the institution of criminal proceedings for discrimination complaints based on age.

Illinois statute specifically states that it is not unlawful to reject an applicant for a particular job where the consideration of safety makes it impracticable to train an applicant over 45 years of age for the job in question.

INDIANA

Indiana law provides that employment discrimination against persons between the ages of 40 and 70 years old is prohibited. The statute specifically covers dismissal from employment, or refusal to employ or rehire any person on account of age. The statute states that it applies to employers, including government employers, but does not include persons or governmental entities subject to the federal A.D.E.A. The state law covers employers with one or more employees.

The Commissioner of Labor is authorized to receive complaints filed under this provision and may investigate all complaints. The Commissioner may "pass upon" charges of discrimination against any person employed within the state. The statute does not elaborate on the Commissioner's authority to "pass upon" age discrimination complaints.

Indiana would not qualify as a referral state under the Oscar Mayer holding since state law excludes those employers covered by federal law.

IOWA

Discrimination based on age is prohibited under Iowa law. This is a statute of general application and covers all aspects of age discrimination in employment. There are no age limitations under the Act. A complaint based on age discrimination may be filed with

the Iowa State Civil Rights Commission. (Note: the Iowa State Civil Rights Commission has issued guidelines stating that the Act seeks to protect individuals 18 years of age and older). The Commission may investigate such complaints, enter into conciliation agreements and issue appropriate orders.

These provisions also apply to Iowa public employees.

Referral of A.D.E.A. complaint in accordance with Oscar Mayer would be necessary for Iowa cases.

KANSAS

Under Kansas law there is no statute of general applicability pertaining to age discrimination in employment.

Referral of A.D.E.A. complaints under the holding of Oscar Mayer would not be necessary.

Under the State's Civil Service Act all state hiring is to be made without regard to age. This statute simply provides for criminal and civil penalties for its breach. (Thus a state authority may institute criminal proceedings for age discrimination violations). A.D.E.A. complaints filed by public employees in Kansas would have to be referred in accordance with the holdings of Oscar Mayer and White v. Dallas Independent School District.

KENTUCKY

The Kentucky Fair Employment Practices Act provides that discrimination in employment based on age against persons 40 and 65 years of age is prohibited. This is a broad statute and covers all aspects of employment discrimination based on age. A complaint by a private or public employee based on age discrimination in employment may be filed with the Kentucky Commission on Human Rights. The Commission may investigate and process such complaints and may seek conciliation agreements. The Commission may also issue cease and desist orders and require a respondent to take such affirmative action as it deems necessary to effectuate the purposes of the statute. Therefore, referral would be necessary for A.D.E.A. complaints in accordance with the Oscar Mayer decision.

The Kentucky Equal Employment Opportunity Act of 1978 makes age discrimination in public contracts illegal. The only remedies available under this statute are sanctions which are imposed upon a public contractor found to be in breach. The law states that failure to comply with any of its provisions constitutes a material breach of the contract and the government may cancel or terminate the contract or declare the contractor ineligible to bid on future contracts until in compliance.

LOUISIANA

Louisiana law prohibits discrimination in employment on the basis of age. The statute applies to individuals at least 40 years of age, but less than 70. The statute provides for a criminal and civil penalty for its breach. It further states that any person aggrieved under the statute shall bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of that Act.

The statute further notes that its provisions shall have no application to any employer who is subject to the provisions of the federal A.D.E.A.

Therefore, Louisiana is not a referral state for purposes of A.D.E.A. complaints under the holding in Oscar Mayer.

MAINE *

The Maine Human Rights Act makes it unlawful to discriminate against an employee on account of age. This statute is broad and covers all aspects of age discrimination in employment. A person aggrieved under this statute may file a complaint with the Maine Human Rights Commission. The Commission is authorized to investigate and process any complaints and to seek relief through informal means (i.e., conciliation). If the Commission's efforts at conciliation fails, it may file a civil action in the state's Superior Court. An individual complainant is also authorized to file a civil action in Superior Court if he or she has been subjected to unlawful age discrimination. (The action is advanced on the court's docket if the complainant can show that a complaint was filed with the Human Rights Commission at least 30 days prior to the filing of the civil action).

There are no age limitations under Maine law. Private and public employers are covered (except for law enforcement agencies and courts of the state).

Maine would qualify as a referral state with respect to A.D.E.A. complaints in accordance with the Oscar Mayer decision.

Maine's state "Personnel Law" also prohibits age discrimination in public employment. The statute does not discuss remedies available to an individual who has been aggrieved thereunder. No referral is required under Oscar Mayer.

MARYLAND *

The Maryland Fair Employment Practices Act prohibits discriminatory employment practices based on age. The statute does not include any age limitations. Maryland's laws are very broad in this regard and cover all aspects of employment. A person who believes he or she has been subjected to age discrimination may file a complaint with the Maryland Commission on Human Relations. The Commission is authorized to investigate such complaints and may seek to secure conciliation agreements where appropriate. The Commission may also issue cease and desist orders.

Maryland would qualify as a referral state under the Oscar Mayer decision.

A Maryland Executive Order also prohibits age discrimination in state agency employment. The state agencies may receive complaints based on age discrimination, and once they receive such complaints, they must promptly advise the Maryland Commission on Human Relations. (The Commission is authorized to process such complaints).

MASSACHUSETTS *

The Massachusetts Fair Employment Practices law provides that age discrimination in employment is unlawful. The statute applies to individuals between the ages of 40 and 65. An individual aggrieved under this statutory provision may file a complaint with the Massachusetts Commission Against Discrimination. The Commissioner of Labor is authorized to investigate such complaints and the Commission Against Discrimination may attempt conciliation. A Hearing Commissioner issues a Final Order (unless an appeal is made to the full Commission). After a determination of probable cause by such Commissioner, the Commissioner may file an action in equity in superior court.

Massachusetts would qualify as a referral state for A.D.E.A. complaints under the Oscar Mayer decision.

Massachusetts law also provides for a fine of $500 for anyone who dismisses from employment, or refuses to employ, any person between the ages of 45 and 65 because of his or her age.

A Massachusetts Executive Order also provides that age discrimination in public employment is against state policy. Enforcement for breaches of this policy statement is vested in the Massachusetts Commission Against Discrimination.

MICHIGAN*

The Michigan Civil Rights Act makes discrimination in employment on account of age unlawful. The statute applies to persons between the ages of 35 and 60 years of age (as interpreted by the Michigan Civil Rights Commission). A person may file a complaint with the Michigan Civil Rights Commission. The Commission has broad authority to receive and process age discrimination complaints. The Commission is authorized to investigate complaints, attempt conciliation, and issue orders calling for such affirmative action as it deems necessary.

Michigan would qualify as a referral state under the court's holding in Oscar Mayer.

Michigan law also prohibits age discrimination in public works contracts. A person aggrieved under this provision may file a complaint with the Michigan Civil Rights Commission which is authorized to receive and process such complaints.

MINNESOTA

Minnesota law prohibits age discrimination in employment against persons over 21 and under age 70. An employee (both state and private) who has been the victim of age discrimination may file a complaint with the Minnesota Department of Human Rights, if all procedural requirements are met. Otherwise, an individual who feels he or she has been discriminated against on account of age may bring suit in the district court wherein the employer is located, or where the violation occurred. (The court can enjoin further violations and may include in its award reinstatement or compensation for any period of unemployment resulting from the violation, together with actual and reasonable attorneys fees, and other costs incurred by the plaintiff).

If a complaint is filed with the Minnesota Department of Human Rights the charge is processed by the Commissioner of Human Rights. The Commissioner is authorized to investigate and process age discrimination complaints. The Commissioner may also attempt to secure conciliation agreements. If the Commissioner's efforts at conciliation fail, he is authorized to bring a civil action in district court. The Commissioner may waive the right to proceed in a civil action if the respondent takes such remedial action as the Commission deems appropriate.

Note: (1) the District court's jurisdiction and that of the Minnesota Department of Human Rights to process age discrimination complaints is concurrent. However, certain procedural requirements must be met in order to pursue a claim with the Minnesota Department of Human Rights.

(2) the age limitation of 21 years does not apply to state statutes which establish a maximum age for entry into employment as a peace officer or firefighter. In such instances the statute is deemed to protect any individual over the age of 25 years.

Minnesota would qualify as a referral state with respect to A.D.E.A. complaints in accordance with the Oscar Mayer Decision.

Minnesota law further provides:

(1) Employers may not discriminate against employees or applicants for employment based on age, or force a worker to retire before age 70 unless the worker is for 2 years, immediately before retirement employed as a professional, executive or administrative employee, who is at least 65, and who is entitled to an immediate non-forfeitable annual retirement benefit which totals in the aggregate at least $27,000.

(2) Pilots and flight crew are not subject to the provisions of this section, and may be retired from employment pursuant to standards contained in regulations promulgated by the Federal Aviation Administration for airline pilots and flight officers, and are subject to the bona fide qualifications requirements for these employees as promulgated by the Federal Aviation Administration.

MISSISSIPPI

Mississippi has no statutory provisions of general application pertaining to equal employment opportunities (Specifically, there are no laws prohibiting age discrimination in employment).

Therefore, Mississippi would not be a referral state for A.D.E.A. complaints in accordance with the Supreme Court's holding in Oscar Mayer.

MISSOURI

Missouri has no statutory provisions of general application prohibiting age discrimination in employment. Therefore, Missouri would not be a referral state for A.D.E.A. complaints in accordance with the the Oscar Mayer holding.

MONTANA

The Montana Fair Employment Practices Act, 3 Employment Practices Guide (CCH) ¶ 25,003.303 et seq., prohibits in part age discrimination (no age limits are delineated). The Montana Commission for Human Rights is empowered to seek and grant relief. It can:

(1) investigate complaints of employment discrimination;

(2) attempt to eliminate informally the discriminatory practice;

(3) prescribe conditions on the respondent's future conduct;

(4) implement any reasonable measure to correct a discriminatory practice.

Accordingly, Montana qualifies as a referral state. Further, the Commission covers State and local public employees.

NEBRASKA

The Nebraska Fair Employment Practices Act, 3 Employment Practices Guide (CCH) ¶ 25,178, et seq., prescribes age discrimination in employment for individuals 40-65 years of age. The Nebraska Equal Opportunity Commission has the power to investigate, to bring a civil action and impose record keeping requirements. It has jurisdiction over State and local employees, therefore, the Nebraska Equal Opportunity Commission has the power to see relief. Accordingly, Nebraska qualifies as a referral agency.

NEVADA

The Nevada Fair Employment Practices Act, 3 Employment Practices Guide (CCH) ¶ 25,203, et seq., prohibits age discrimination (no limits set). The Nevada Commission on Equal Rights can investigate charges of employment discrimination, make findings of fact, seek injunctive relief and conduct hearings, ¶ 25,213. Accordingly, it is empowered to seek relief as well as grant it. Therefore, the requirements, of § 14(b) have been satisfied and Nevada should be considered a referral state for age cases. The Commission covers State and local public employees.

NEW HAMPSHIRE

The New Hampshire Law Against Discrimination prohibits, in part, age discrimination, 3 Employment Practices Guide (CCH) ¶ 25,401. No age limits were set. The New Hampshire Commission for Human Rights has the power to adopt rules and regulations, investigate complaints, hold hearings, subpoena witnesses, create advisory agencies and issue publications. In addition, it may seek to eliminate discrimination by informal methods, issue cease and desist orders and take affirmative action such as hiring, reinstatement with or without backpay, etc. This, in conjunction with its prohibition against age discrimination qualifies it as a referral agency. The Commission covers State and local public employees.

NEW JERSEY

New Jersey prohibits age discrimination in employment (no age limits), 3 Employment Practices Guide (CCH) ¶ 25,614. The New Jersey Division on Civil Rights, under the auspices of the State Attorney General, may initiate complaints, investigate charges, attempt informally to eliminate discriminatory practices, conduct hearings, take whatever affirmative action is needed to end the practice, and seek judicial enforcement of its orders. As such, it is empowered to seek relief as well as grant it. Based on the foregoing it qualifies as a referral agency. The New Jersey Division on Civil Rights covers State and local public employees.

NEW MEXICO

The New Mexico Human Relations Act prohibits age discrimination; an age limit has been delineated, to wit: The act does not prohibit the mandatory retirement of an employee upon reaching age 65, if the employee is operating under a retirement plan which meets the requirements of PL 93-406 (ERISA), 3 Employment Practices Guide (CCH) ¶ 25,807. The New Mexico Commission on Human Rights has the ability, to seek relief as well as grant it since it is empowered to promulgate regulations, investigate complaints, issue cease and desist orders, hold hearings, attempt informal settlements and seek specific performance of concilliation agreements in court. Accordingly, based upon the foregoing, it qualifies as a referral agency. The Commission covers State and local public employees.

NEW YORK

The New York Human Rights law prohibits age discrimination, 3 Employment Practices Guide (CCH), ¶ 26,007. (There is an age limit of 18-65 years of age when the alleged discriminating entity is an employer or licensing agency, ¶ 26,007(3)(a)). The New York Division of Human Rights has the ability to seek and grant relief. It can conduct investigations, attempt informal settlements, hold hearings, issue cease and desist orders, order reinstatement or hiring, grant compensatory damages and seek civil enforcement of its orders. Accordingly, New York qualifies as a referral state. The Division covers State and local public employees.

NORTH CAROLINA

North Carolina does not qualify as a referral state. The North Carolina Equal Employment Practices Act does not prohibit age discrimination within the meaning Oscar Mayer, 3 Employment Practices Guide (CCH) ¶ 26,450. There is a general policy statement about giving equal opportunity for employment, however, it is broad and only applies to public employment. In addition, the North Carolina Human Relations Council has no ability to grant or seek relief for state age complaints. Therefore, since the requirements of Section 14(b) of the ADEA have not been met, North Carolina does not qualify as a referral agency.

NORTH DAKOTA

North Dakota prohibits employment discrimination based on age. However, the only mechanism for removing illegal age practices is for the appropriate state authority to commence a criminal action. The District Office will have to research the State's law (and examine analagous Title VI law) as well as ascertain whether the rationale of White v. Dallas Independent School District, 581 F. 2d 556 (5th Circuit 1978) is present before concluding whether North Dakota qualifies as a referral state.

OHIO

Ohio does prohibit employment discrimination based upon age for those individuals who are 40-70 years of age, 3 Employment Practices Guide (CCH) ¶ 26,750. The Ohio Civil Rights Commission is empowered to promulgate rules and regulations, investigate charges, prepare educational programs, hold hearings, issue subpoenas and study discrimination problems. In addition, it can attempt to eliminate unlawful employment practices by informal means, issue cease and desist orders, seek judicial enforcement of its orders and take any other reasonable affirmative action. However, the above does not apply when the employee has available to him the opportunity to arbitrate a discharge. Therefore, Ohio is a referral state except in those discharge cases where the employee has the opportunity to arbitrate his or her discharge.[1]

[1] Ohio has enacted new legislation which provides a complaint with mutually exclusive remedies. That is, a charging party may bring his grievance to the attention of the Ohio Civil Rights Commission or he may institute a private action in state court. He cannot do both. The Office of General Counsel is presently analyzing the ramifications this legislation has on the referral of age cases in Ohio. A memo will be forthcoming with instructions for the Commission's Ohio District Office.

OKLAHOMA

Oklahoma does not prohibit age discrimination within the meaning of Section 14(b) of the ADEA or Oscar Mayer. There is only a concurrent legislative resolution declaring that State departments and agencies should conform as nearly as practicable to the ADEA. Since the "prohibition" requirement has not been met Oklahoma does not qualify as a referral state.

OREGON

The Oregon Fair Employment Practices Act prohibits age discrimination in employment for workers 18-65 years of age, 3 Employment Practices Guide (CCH), ¶ 27,002, and 27,007. The Oregon Civil Rights Division is empowered to investigate charges of employment discrimination, attempt to eliminate discriminatory practices through informal methods, issue cease and desist orders, conduct hearings and seek judicial enforcement. Accordingly, it can seek relief as well as grant. Therefore, based on the above, Oregon qualifies as a referral agency. The Division has jurisdiction over State and local public employees.

PENNSYLVANIA

The Pennsylvania Human Relations Act prohibits age discrimination in employment for workers 40-60 years of age, 3 Employment Practices Guide, ¶ 27,204 and 27,205. The Pennsylvania Human Relations Commission has the dual ability to seek relief as well as grant it. It can investigate charges of discrimination, attempt informal settlement, conduct hearings, issue cease and desist orders, order hiring or reinstatement with or without backpay and seek judicial enforcement of its orders, ¶ 27,205 et seq. The Commission covers employees of State and local governments.

RHODE ISLAND

The Rhode Island Fair Employment Practices Act prohibits age discrimination against employees who are 45-65 years old, 3 Employment Practices Guide (CCH) ¶ 27,651 and 27,652. The Rhode Island Director of Labor is empowered to investigate, publish regulations, attempt informal methods of settlement, conduct hearings, issue cease and desist orders, and implement any reasonable directive that would further the purposes of the Act. Finally, the Director can seek judicial review for enforcement purposes. Thus, there exists an ability to seek and grant relief. However, the Act does not apply to persons employed in private domestic service of service as a farm labor. Therefore, except for these two categories of employment, Rhode Island qualifies as a referral state. The Act covers employees of State and local governments.

SOUTH CAROLINA

The South Carolina Human Affairs law prohibits age discrimination for those employees 40-70 years of age, 3 Employment Practices Guide (CCH) ¶ 27,720.02; 27,720.03; and 27,720.08. The South Carolina Commission on Human Affairs has the ability to seek relief as well as grant it. That is, it can initiate complaints, issue subpoenas, serve interrogatories, take depositions, enforce discovery orders by court order, conduct a hearing, order affirmative action such as hiring, reinstatment or upgrading of employees, with or without back pay. In addition, it can seek judicial enforcement of its orders. As such, it qualifies as a referral agency. The Commission has jurisdiction over employees of State and local government.

SOUTH DAKOTA

The South Dakota Human Relations Act has several anti-discrimination provisions. However, none concern age, 3 Employment Practices Guide (CCH) ¶ 27,801.10 et seq. There is a section of the South Dakota Public Service Career Act which prohibits age discrimination (18-65) within state employment, ¶ 27,878. With respect to the second prong of the Oscar Mayer test, the South Dakota Commission of Human Rights does have the power to seek relief as well as grant it, ¶ 27,801.36 et seq. It can conduct hearings, issue cease and desist orders, take reasonable affirmative action and seek judicial enforcement. Thus, South Dakota is a referral state only for state employees. South Dakota is not a referral state for employees of the private sector or of local governments.

TENNESSEE

The Tennessee Fair Employment Pactices law does not prohibit age discrimination, 3 Employment Practices Guide (CCH), ¶ 27,900.09. Accordingly, Tennessee should not be considered a referral state for purposes of Section 14(b) of the ADEA (since Tennessee does not prohibit age discrimination it is not necessary to ascertain whether the Tennessee Commission for Human Development has the power to seek relief and/or grant it).

TEXAS

Discrimination in employment because of age (21-65) in Texas is declared contrary to public policy. However, it is explicitly prohibited in public employment, 3 Employment Practices Guide (CCH), ¶ 28,075. Notwithstanding the prohibition it appears that Texas law does not provide a mechanism for a public employee to challenge alleged discriminatory age practices. Due to the uncertainty it is suggested that a District Office in Texas research the issue concentrations on whether the rationale of White v. Dallas Independent School District and Oscar Mayer are met.

UTAH

The Utah Anti-Discriminatory Act prohibits age discrimination in employment for workers age 40 and older, 3 Employment Practices Guide (CCH), ¶ 28,106. The Utah Industrial Commission is a state agency empowered to seek and grant relief. It can conduct investigations, endeavor to eliminate unlawful employment practices by informal methods, conduct hearings, issue cease and desist orders and take any reasonable affirmative action that would further effectuate the purposes of the Act. Accordingly, based upon the foregoing, Utah should be considered a referral state within the meaning of the ADEA. The Commission has jurisdiction over employees of State and local governments.

VERMONT

The Vermont Fair Employment Practices Act does not list age as one of the types of employment discrimination prohibited in its general anti-discrimination statute, 3 Employment Practices Guide (CCH), ¶ 28,201. Thus, Vermont fails to meet the first requirement of Section 14(b) and should not be considered a referral state for purposes of the ADEA.

VIRGINIA

The Virginia Fair Employment Practices law does not prohibit age discrimination in employment within the meaning of Section 14(b) and Oscar Mayer, 3 Employment Practices Guide (CCH) ¶ 28,472. The provision states: "It is the policy of Virginia to provide equal employment opportunity to all employees without regard to race, color, religion, national origin, political affiliation, handicap, sex or age." Further, the Virginia Equal Employment Opportunity Commission has neither the power to seek relief nor grant it. Rather, it functions are basically advisory in nature. Thus, since neither part of the test for referral under Section 14(b) has been met, Virginia should not be classified as a referral state.

WASHINGTON

The Washington Law Against Discrimination prohibits age discrimination against employees that are 40-65 years of age, 3 Employment Practices Guide (CCH), ¶ 28,518 et seq. See also ¶ 28,650. The Washington State Human Rights Commission is empowered to seek relief as well as grant it. It can investigate charges of discrimination, attempt informal settlements, conduct hearings, issue cease and desist orders, take affirmative action such as hiring, reinstatement, backpay and finally, seek judicial enforcement of its orders. Accordingly, Washington qualifies as a referral agency.*

WEST VIRGINIA

The West Virginia Human Rights Act prohibits age discrimination for workers 40-65 years of age, 3 Employment Practices Guide (CCH), ¶ 28,703 and 28,709. The West Virginia Human Rights Commission initiate complaints, attempt to eliminate the discriminatory practice informally, investigate charges, conduct hearings, issue cease and desist orders, take reasonable affirmative action and seek judicial enforcement of its orders. As such, West Virginia qualifies as a referral agency. The agency also covers employees of State and local governments.

*It is unclear whether age discrimination is prohibited against state employees. Such discrimination has been declared contrary to the Governors' Executive Order, dated August 2, 1966. See ¶ 28,610. The District Office should research the question whether this type of prohibition satisfies the first prong of the referral test (i.e., whether the state has a law prohibiting employment discrimination). See Oscar Mayer v. Evans, supra.

WISCONSIN

The Wisconsin Fair Employment Act prohibits age discrimination in employment for workers 40-65 years of age, 3 Employment Practices Guide (CCH), ¶ 28,902 and 28,902A. The Wisconsin Department of Industry, Labor and Human Relations can investigate complaints, subpoena witnesses, attempt to eliminate the discriminatory practice by conference, persuasion and conciliation, and take any action that will effectuate the purposes of the Act. Based on the above consideration Wisconsin qualifies as a referral state under Section 14(b) of the ADEA. The Department also covers employees of State and local governments.

WYOMING

The Wyoming Fair Employment Practices Act of 1965 does not prohibit age discrimination in employment (It prescribes employment discrimination on the basis of sex, race, creed, color, national origin or ancestry). Notwithstanding the ability of the Wyoming Fair Employment Practice Commission to seek and grant relief, Wyoming does not qualify as a referral state under the ADEA since age discrimination is not prohibited. Oscar Mayer & Co. v. Evans, supra.

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*The Commission has found that it will be necessary to refer ADEA charges for both private and public sector employees in the following states:

1. Alaska, see Alaska Statutes, Title 18, Chapter 80, §18.80.20
2. California, see California Government Code, Title 2, Division 3, Part 2.8
3. Connecticut, see Connecticut General Statute, §31.126
4. Delaware, see Title 9, Delaware Code, Chapter 7, Sub-Chapter 2

   Note that age discrimination charges for public employees are initially filed with the Delaware State Human Relations Office.
5. Maine , see 5 Maine Revised Statutes Annotated, §4551

6. Maryland, see Article 49B, §9 of the Annotated Code of Maryland

7. Massachusetts, see Chapter 151B of the Massachusetts General Laws

8. Michigan, see Michigan Statutes Annotated, Michigan Civil Rights Act, P.A. 453, Laws of 1977, as amended

9. The State of Colorado would qualify as a referral state for ADEA charges under the following circumstances:

(a) When a private sector employee is discharged on account of age, referral is necessary. See Colorado Revised Statutes, Chapter 8, Article 2, Sections 8-2-116 and 8-2-117 (1973). This statute provides for criminal penalties for its breach. For all other discriminatory actions based on age, i.e., those other than discharge, Colorado would not qualify as a referral state insofar as private sector employees are concerned.

(b) When a public sector employee (a classified state employee) is discriminated against on account of age, such charges are to be referred to the Colorado State Personnel Board (CSPB). See Code of Colorado Regulations, State Personnel System, 4 CCR 801-1, as amended, October 1, 1979. The CSPB has exclusive jurisdiction over matters affecting classified state civil service employees. State of Colorado v. Colorado Civil Rights Commission, ex. rel. McAllister, 521 P.2d 908 (1974), appeal dismissed, 419 U.S. 1084 (1974). Note that the CSPB does not have jurisdiction over: (1) Non classified state employees, see Colorado Constitution, Article XII, Section 13(2), and (2) "Contract employees," which phrase has been defined by the Colorado Attorney General's office as temporary employees with appointments limited to six months in duration. See Colorado Constitution §13(9). The CSPB would have jurisdiction over complaints filed by employees who have been appointed to temporary positions within the State Personnel System.